TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 29

WILLIAM C. CHANDLER, PETITIONER,

vs.

WARDEN FEETAG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF [illegible]

PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1934.

CERTIORARI GRANTED APRIL 8, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 39

WILLIAM C. CHANDLER, PETITIONER,

VS.

WARDEN FRETAG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

INDEX

1-2 [File endorsement omitted]

In the Circuit Court of Knox County, Tennessee

Before the Honorable JOHN M. KELLY, Judge

WILLIAM C. CHANDLER

vs.

WARDEN FREYTAG

No. 16199

PETITION—Filed August 12, 1952

To the Honorable John M. Kelly, Judge:

Your petitioner, William C. Chandler, would respectfully show unto the Court the following, to-wit:

1

Your petitioner is illegally restrained of his liberty by Warden Freytag, Warden or Deputy Warden of the Tennessee State Penitentiary, also known as Brushy Mountain Prison, at Petros, Morgan County, Tennessee, less than 70 miles from Knoxville, Tennessee and is and has been so illegally confined since the 17th day of May, 1952, without authority of law.

2

The cause or pretense of said imprisonment and illegal restraint and confinement is a certain judgment No. 7139, allegedly based on indictment No. 7139 in the Criminal Court of Knox County, Tennessee, charging petitioner with Housebreaking and Larceny of "1 lot of Cigarettes, Chewing Gum and Cigars of the value of $3.00" from a business house. Petitioner, upon his plea of "guilty" to the House Breaking and Larceny charge had his sentence fixed at 3 years confinement in the State Penitentiary by the jury. Petitioner has fully served 3 years time in the State Penitentiary, and avers that he is entitled to his freedom from further restraint or confinement.

3

3 Petitioner, was not by the Grand Jury indicted as an Habitual Criminal, and neither the indictment nor the judgment thereon evidences any notice to Petitioner that he would be tried as an habitual criminal, and Petitioner avers that he never received any formal written notice of the nature and cause of the Habitual Criminal accusation against him, nor a copy thereof,

to which he was entitled under Article 1, Sec. 9, of the Constitution of Tennessee, and that the judgment of the Court committing Petitioner to the State Penitentiary for the rest of his natural life as an Habitual Criminal, is void on its face, in that it fails to conform to the indictment and also fails to show that Petitioner was a fourth offender subject to punishment as an Habitual Criminal.

4

Petitioner was indicted on March 10, 1949 and released on bond awaiting trial on the House Breaking and Larceny charge. Petitioner was guilty of the House Breaking and Larceny as charged in the indictment, and was advised that the sentence on such charge could be from three to ten years. Petitioner is ignorant of legal procedures, and was without financial resources to pay an attorney, and knowing his guilt on the Housebreaking and Larceny charge felt that an attorney could do him no good on said charge. While out on bond Petitioner went merrily on his way without any notice whatever that he would be tried as an Habitual Criminal or that such an accusation was contemplated by the Attorney General.

5

On May 17, 1949, petitioner appeared for trial and just before trial time was told that he would be tried as an Habitual Criminal. Petitioner asked the Court for additional time to get an attorney when advised that he was in danger of being sentenced to prison for the rest of his natural life, but the Court advised Petitioner that he had been out on bond and had had time to get an attorney and denied him a continuance. The Court attempted to explain the Habitual Criminal Act to Petitioner and his brother James Chandler a minister of the gospel. The Court
4 then suggested that Petitioner consult with his said brother and other members of his family then present in the Court Room. Petitioner went into a huddle with members of his family and was advised that since he was guilty of House Breaking and Larceny, as charged, there was nothing for him to do but plead guilty. Petitioner is a colored man, with little education and no technical legal training and no financial resources. He was surprised, bewildered and confused and did not know that he was entitled to plead guilty on the Housebreaking and Larceny charge and at the same time plead not guilty to the Habitual Criminal accusation made against him for the first time on the morning of the trial. Petitioner's brother, James Chandler, did most of the talking with the Court, and although he is a minister of the gospel he is a man of limited education and unfamiliar with legal proceedings, but has an abiding faith in the justness of punishment for all sinners and

offenders. The said James Chandler was totally unqualified to advise petitioner of his legal rights, but at the suggestion of the Court petitioner was referred to said brother and other members of his family for legal advice on the course he should pursue, and they advised petitioner that there was nothing to do but plead guilty, and petitioner entered his plea of guilty without knowingly, intelligently and understandingly knowing his rights or the consequences of such plea, except to the House Breaking and Larceny charge.

6

Petitioner was then and there put to trial without an attorney. One witness testified to the House Banking and Larceny as charged in the indictment, but no judgments of prior conviction or other evidence was submitted to the jury on the Habitual Criminal Charge, as required by Section 11738 of the Code of Tennessee. The jury was not charged by the Court, all in violation of Tennessee Code Sections 11749, 11750 and 11751. The jury returned its verdict finding petitioner guilty of Housebreaking and Larceny and fixed his punishment at three years in the State Penitentiary. The jury further returned a verdict of guilty of being an Habitual Criminal, whereupon the Court sentenced petitioner to the State Penitentiary for the rest of his natural life.

7

Petitioner further shows to the Court that neither in the indictment or the judgment is there any allegation that petitioner was brought to trial as an Habitual Criminal, and the verdict of the jury finding petitioner guilty as an Habitual Criminal is not supported by the indictment nor recitals in the judgment that he was so put to trial. Further, the record fails to show whether petitioner's plea of guilty of being an Habitual Criminal was entered under Code Section 11863.1, for which no additional punishment could be exacted, or under Code Section 11863.2 providing for sentence to life imprisonment.

8

Attached hereto as exhibit to this petition is copy of Indictment No. 7139 and Judgment in Cause No. 7139, duly certified by the Clerk of the Criminal Court of Knox County, Tennessee.

9

Despite the recital in the Judgment that petitioner came, having counsel present, petitioner avers that he had no legal counsel of his own, and he is advised and believes that the Court will so

testify, and if his brother and members of his family be said to have been his counsel he says that they were totally unqualified to legally advise or represent him in a matter involving the rest of his natural life.

10

Petitioner avers that the proceedings heretofore set forth were in violation of due process of law as provided by the 14th Amendment to the Constitution of the United States, and in violation of the law of the land under Art. 1, Sec. 8 of the Constitution of Tennessee, in that he was not charged as an Habitual Criminal in the Indictment, and in that his plea of guilty of being an Habitual Criminal was not intelligently and knowingly entered; and in that he had no formal written notice of the Habitual Criminal accusation; and in that he was surprised and bewildered by such oral accusation on the morning of trial, and in that the court refused him a continuance and failed to appoint competent legal counsel for him.

11

Petitioner avers that the Habitual Criminal Act as applied to this petitioner is unconstitutional in that it provides for no formal written notice of the nature and cause of the accusation against him as provided in Art. 1, Sec. 9 of the Constitution of Tennessee, and that the Court's denial of counsel to petitioner was also violative of said constitutional provision.

12

Petitioner further avers that the oral Habitual Criminal accusation, not by the Grand Jury found, was a proceeding by information, and violative of Art. 1, Sect. 14 of the Constitution of Tennessee, Art. 11, Sec. 16 of the Constitution of Tennessee and that the entire proceeding was violative of Due Process of Law under the Federal Constitution and the Law of the Land under the Constitution of Tennessee.

13

Petitioner avers that he has served more than the 3 year sentence for Housebreaking and Larceny, and that so much of Judgment No. 7139 as adjudges him to be an Habitual Criminal and subject to Life imprisonment is void.

14

Petitioner would further show that practically all of his witnesses are in Knox County, Tennessee, and that the cause of justice would be aided by a hearing in said county.

15

The legality of petitioners restraint has not already been adjudged upon a prior proceeding of this character, to the best of applicant's knowledge and belief.

16

This is petitioner's first application for a Writ of Habeas Corpus.

(S.) WILLIE MAE CHANDLER,
Acting for Petitioner,
William C. Chandler
(S.) EARL E. LEMING,
Petitioner's Attorney,
608 Empire Building,
Knoxville, Tennessee
Phone 5-4130

Duly sworn to by Willie Mae Chandler. Jurat omitted in printing.

7a EXHIBIT No. 1 TO PETITION

Criminal Court for Knox County, March Term, 1949

The Grand Jurors for the State of Tennessee, upon their oaths, present

That William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, then and there with force and arms feloniously and forcibly did break and enter a certain house of Roscoe, doing business as the Melody Club the same being a business house and other than a mansion house with the intent of the said defendant, then and there to commit a felony, to-wit: A larceny, that is to say, with the intent to feloniously take, steal and carry away the goods and chattels of Roscoe Sutton then and there to be had and found in said house and so to deprive the true owner aforesaid, of the use thereof against his will and consent, contrary to the statute and against the peace and dignity of the State.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, feloniously 1 Lot of Cigarettes, Chewing Gum and Cigars of the value of $3.00, the further description thereof to the Grand Jurors unknown of the goods and chattels of Roscoe Sutton then and there being found, said defendant, feloniously did steal, take and carry away with intent to deprive said owner thereof against his will,

contrary to the statute and against the peace and dignity of the State.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that William C. Chandler heretofore, to-wit: On the — day of January, 1949, in the State and County aforesaid, 1 Lot of Cigarettes, Chewing Gum and Cigars, the further description thereof to the Grand Jurors unknown, of the value of $3(0),
7b of the goods and chattels of Roscoe Sutton before then feloniously stolen, taken and carried away by someone to the Grand Jurors unkrown, fraudulently and feloniously did receive and buy, conceal and aid in concealing, well knowing the same to have been feloniously stolen, taken and carried away with intent of the said defendant, then and there to cheat, deprive and defraud said owner of the use thereof, contrary to the statute and against the peace and dignity of the state.

(S.) HAL H. CLEMENTS, JR.,
District Attorney General.

[Endorsed:] Filed Aug 12, 1952. 16139. (S.) Rhoten Byington, Clerk. 16199. William C. Chandler vs. Warden Freytag. Exhibit No. 1. Witness Identified and Approved. Date: Oct. 4, 1952. (S.) John M. Kelly, Circuit Judge. Filed Oct. 6, 1952. W. H. Eagle, Clerk.

[Endorsed:] No. 7139. Indictment. The State vs. William C. Chandler. Housebreaking, Larceny and Receiving Stolen Property. Roscoe Sutton, Prosecutor. Witnesses: Roscoe Sutton, Capt. Lee, Large, A. W. Christenberry. Clerk: Summon above named witnesses for the State. Hal H. Clements, Jr., District Attorney General.

Witnesses sworn by me in presence of the Grand Jury March 10, 1949. E. F. King, Foreman of the Grand Jury.
Filed 10 day of March, 1949. Horace E. Cate, Clerk.
A True Bill: E. F. King, Foreman of the Grand Jury.

STATE OF TENNESSEE,
KNOX COUNTY:

I, HORACE E. CATE, Clerk of the Criminal Court for the County of KNOX, in and for the County and State aforesaid do hereby certify that the foregoing is a true and perfect copy of the Indictment in the case of State vs. William C. Chandler upon a charge of HBL & RSP as the same appears of record in my office.

Witness my hand, and seal of said Court at office in Knoxville, this the 23rd day of June, 1952.

(S.) HORACE E. CATE,
Clerk.

[SEAL.]

7c EXHIBIT No. 2 TO PETITION

Tuesday, May 17, 1949

Court met pursuant to adjournment, present and presiding the Honorable J. Fred Bibb, Judge of the Criminal Court for Knox County, when the following proceedings were had and entered of record, to-wit:

B I B L A R S P

No. 7139

THE STATE

vs.

WM. C CHANDLER

Came the Attorney General for the State, also defendant in custody, having counsel present, and on hearing the indictment read for plea thereto, defendant says that he is guilty of Housebreaking and Larceny and also that he is guilty of being an Habitual Criminal. Thereupon came the following jury, to-wit: C. R. Spangler, J. L. Clancy, W. D. Claxton, F. G. Blake, E. W. Clark, C. C. Hansard, T. A. Blake, M. E. Dawson, R. L. Gentry, Sam Hall, C. A. Hensley and Ed Eisenberg, all good and lawful men, citizens of Knox County, who having been summoned, selected and impaneled, were sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause and charge of the Court, upon their oaths the jurors say: they find the defendant guilty of Housebreaking and larceny as charged and fix his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an Habitual Criminal. It is therefore the judgment of the Court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal to the State Penitentiary for the remainder of his natural life, as provided in section 11863.2 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The Clerk of this Court will make out and furnish to the warden of the penitentiary, transcript of the judgment of the Court in this cause at his earliest convenience.

Court Adjourned Until Tomorrow Morning at 9: O'Clock.

J. FRED BIBB,
Judge

7d STATE OF TENNESSEE,
KNOX COUNTY:

I, HORACE E. CATE, Clerk of the Criminal Court for the County of Knox, in and for the County and State aforesaid do hereby certify

that the aforegoing is a true and perfect copy of the Judgment in the case of The State vs. Wm. C. Chandler upon a charge of HBL & RSP as the same appears of record in my office.

Witness my hand and seal of said Court at office in Knoxville, this the 25 day of June, 1952.

(S.) HORACE H. CATE.
[SEAL.] *Clerk.*

Filed Aug. 12, 1952. 16199. (S.) Rhetea Byington, Clerk.

EXHIBIT No. 2

16199

WILLIAM C. CHANDLER

vs.

WARDEN FREYTAG

Witness: Identified and Approved.

Date: Oct. 4, 1952. (S.) John M. Kelly, Circuit Judge.

Filed Oct. 6, 1952. W. H. Eagle, Clerk.

8-10 IN THE CIRCUIT COURT OF KNOX COUNTY, TENNESSEE

WRIT OF HABEAS CORPUS—August 12, 1952

STATE OF TENNESSEE,
County of Knox:

To Warden or Deputy Warden FREYTAG, or such other person as may be holding, restraining and confining Wm. Clyde C. Chandler in the Tennessee State Penitentiary, at Brushy Mountain, Petros, Tennessee:

You are hereby commanded to have the body of Clyde C. Chandler, Number 43839, who is alleged to be unlawfully detained by you, before me at 9:00 A. M. O'clock, August 20, 1952 in the Knox County Courthouse, to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises.

This 12th day of August, 1952.

(S.) JOHN M. KELLY.
Circuit Court Judge.

"Memorandum Opinion", Kelly, J. was adopted verbatim, and incorporated in the "Opinion of the Tennessee Supreme
11-17 Court", Omitted. Printed side page 98 infra.

18 In the Circuit Court of Knox County, Tennessee

[Title omitted]

ORDER DISMISSING PETITIONER'S ACTION AND REMANDING HIM TO CUSTODY OF WARDEN OF THE STATE PENITENTIARY AT PETROS
October 2, 1952

This cause came on to be heard on the 20th day of August, 1952, before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County, Tennessee, upon the Petition of Petitioner, William C. Chandler, for Writ of Habeas Corpus and Certified copies of the Indictment and Judgment in Cause No. 7139 out of the Criminal Court for Knox County filed as Exhibits No. 1 and 2 respectively to the Petition, and upon oral testimony of witnesses upon the hearing; the Writ of Habeas Corpus addressed to Warden or Deputy Warden Freytag having issued on August 12th, 1952, returnable August 20, 1952.

Upon the hearing the cause was taken under advisement by the Court which on the 4th day of September, 1952 handed down its "Memorandum Opinion", which is ordered to be made a part of the record in this cause, dismissing Petitioner's action and remanding him to the custody of the Warden of the State Penitentiary at Petros, under the sentence of life imprisonment.

It is THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's action be dismissed and that Petitioner be remanded to the custody of the Warden of the State Penitentiary at Petros under the sentence of life imprisonment under Judgment No. 7139 which is in all things a valid judgment. The costs of the cause are adjudged and assessed against Petitioner for which execution may issue.

Entered this the 2nd day of October, 1952, Nunc Pro Tunc September 4, 1952.

19-21 Thereupon Court adjourned until Friday, October 3, 1952, at nine o'clock A. M.

(S.) JOHN M. KELLY, *Judge*.

22-23 Bond on appeal for $250.00 filed September 30, 1952 omitted in printing.

24-28 Clerk's Certificate to foregoing transcript omitted in printing.

29 [File endorsement omitted]

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

[Title omitted]

BILL OF EXCEPTIONS—Filed October 6, 1952

This Habeas Corpus Proceeding came on to be heard on the 20th day of August, 1952 before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County at Knoxville, Tennessee upon the petition of Petitioner for a Writ of Habeas Corpus and Certified copies of the Indictment and Judgment in cause No. 7139, out of the Criminal Court for Knox County, filed as exhibits to the petition, and upon oral testimony of witnesses upon the hearing.

The Court suggested a brief statement of the case, stating that the Court had already read the Petition and the Certified copies of the indictment and Judgment in cause No. 7139 filed as exhibits to the petition, copies of which are set forth as Exhibits 1 and 2 below.

EXHIBIT "1"

Copy of Indictment No. 7139: Omitted. Printed side page 7a ante.

30 EXHIBIT "2"

Copy of Judgment No. 7139: Omitted. Printed side page 7c ante.

The oral testimony of witnesses at the hearing of Petitioner's Habeas Corpus Proceeding, was taken in shorthand and duly
31-33 transcribed by Miss Len G. Gumphrey, Court Reporter, and is attached, included and made a part of this Bill of Exceptions, as follows:

34 In the Circuit Court of Knox County, Tennessee

[Title omitted]

HABEAS CORPUS PROCEEDINGS—Filed October 6, 1952

This cause came on to be heard on August 20, 1952, before the Honorable John M. Kelly, Judge of the First Circuit Court, in the Court Room, Court House, Knoxville, Tennessee, when the following testimony was introduced and proceedings had.

The pleadings were not read but the case was stated briefly to the Court.

The witnesses were sworn and excused under the rule.

J. L. CLANCY, the first witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION

By Mr. LEMING:

Q. Mr. Clancy, your name is J. L. Clancy, and you were a juryman in this cause?

A. Yes, sir.

Q. Do you recall the case?

A. Yes, sir.

Q. I will ask you to state what transpired at this trial as near as you can recall?

35 A. There wasn't any trial.

Q. Was the defendant required to stand up and plead?

A. When Judge Bibb told him to stand up, he stood up.

Q. Was a plea entered as to housebreaking and larceny?

A. $3.10 and something——

Q. Did he plead guilty to the indictment when he stood up?

A. It seems to me he admitted it.

Q. Did he stand up a second time and say he would plead guilty?

A. He didn't say anything.

Q. How long did the trial take, Mr. Clancy?

A. Just a few minutes.

Q. Two or three or five minutes?

A. Five minutes.

Q. Was there any explanation as to what his plea would mean?

MR. GREENWELL: I want to interpose an objection at this time—it looks like we are getting into this question—the writ of habeas corpus does not lie for the correction of errors and it is obviously what we are coming to——

THE COURT: I sustain that. The Attorney General objects as the writ of habeas corpus does not lie for the correction of errors.

MR. LEMING: That is true, but we are attempting to show as to the habeas corpus that the judgment of the court was void because he was denied due process——

THE COURT: What does the record show?

36 MR. LEMING: The Judgment reads:

"Court met pursuant to adjournment, present and presiding the Honorable J. Fred Bibb, Judge of the Criminal Court for

Came the Attorney General for the State, also defendant in custody, having counsel present, and on hearing the indictment read for plea thereto defendant says that he is guilty of House-breaking and Larceny.

The COURT. That was housebreaking and larceny and receiving stolen property?

MR. LEMING. Yes, sir. (Continuing to read)

"and also that he is guilty of being an Habitual Criminal. Thereupon came the following jury, to-wit: C. R. Spangler, J. L. Clancy, W. D. Claxton, F. G. Blake, F. W. Clark, C. C. Hansard, T. A. Blake, M. F. Dawson, R. L. Gentry, Sam Wolf, C. A. Hensley and Ed Eisenberg, all good and lawful men, citizens of Knox County, who having been summoned, selected and impaneled, were sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause and charge of the Court, upon their oaths the jurors say: They find the defendant guilty of housebreaking and larceny as charged and fix his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an Habitual Criminal. It is therefore the judgment of the Court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal to the State Penitentiary for the remainder of his natural life, as provided in Section 11462 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The Clerk of this Court will make out and furnish to the Warden of the penitentiary, transcript of the judgment of the Court in this cause at his earliest convenience."

MR. LEMING. We filed as Exhibits to this case certified copy of both the indictment and this judgment. What we are attempting to do is not to correct errors, but to show that the judgment of the Court was void in so far as habeas corpus is concerned, in that there was a denial of due process. In the case of Zerbst v. Johnson

the Court held that even having jurisdiction in the first place, fail-
ing to grant to the accused those rights and privileges inclu-
37 under due process the Court should lose all jurisdiction.

Mr. GREENWELL: I want to raise the further objection in what they are doing here, trying to have a juryman impeach his own verdict.

The COURT: That has not happened yet. Of course, a juryman does not impeach his own verdict.

Q (Mr. Leming continuing) Did the accused have an attorney present?
A No, sir.
Q Did you see him advising with anyone regarding his case.
A I never.
Q You say it only took five minutes for the whole proceeding?
A That is my best recollection.
Q Did the Court read a written charge to the jury?
A I don't think so, we all just agreed to it.
Q Just regular proceeding, you say you all agreed to it?
A Yes, sir.
Q You didn't go out of the jury box?
A To my best recollection we didn't.
Q Just held up your hands and agreed?
A Yes.
Q No written charge to the jury, charging them on the law?
A No, not as I recall.

Mr. GREENWELL: If Your Honor please, this goes right back to the same thing.
38 The COURT: There is a question of presumption here, presumption that the proceedings was regular.

Mr. LEMING: We are attempting to show, Your Honor, that it was not regular—that is the purpose of getting this evidence in.

Mr. GREENWELL: We say, it was regular, but for the purpose of argument if it is not regular I am going to object to any error in the trial, if there was such, it has no place in this hearing.

The COURT: Just see what happened down there that did deprive the defendant of his rights.

Mr. GREENWELL: Very well, Your Honor.

Q You say there was no charge read to the jury?
A That is my best recollection.
Q And then the Court required the defendant to stand up?
A Yes.
Q Did the Court sentence the defendant at that time?
A He said he hated to do it, he knew him well, but he had to do it.
Q Were there any previous judgments read to the Court——

Mr. GREENWALL: We interpose the same objection.

The COURT: Very well.

Q. Was there any testimony whatever of prior convictions of this defendant read?

A. No.

Q. In other words there was no evidence whatever offered of prior convictions of this defendant.

39 A. To my best recollection, I would say no.

Cross examination waived.

(Witness excused.)

WILLIAM C. CHANDLER, the petitioner, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. Leming:

Q. State your name to the Court?

A. William C. Chandler.

Q. On the 17th day of May, 1949, were you put on trial?

A. Yes, sir.

Q. What was the nature of the accusation?

A. House breaking and larceny and receiving stolen property.

Q. Had you been out on bond sometime prior to that?

A. Yes, sir.

Q. How long had you been out on bond, approximately?

A. About three months.

Q. And you were guilty of the housebreaking and larceny?

A. Yes, sir.

Q. You had no defense whatever to that?

A. No, sir.

Q. What day were you first advised that you also were going to be tried as an habitual criminal?

A. That morning.

Q. May 17, 1949?

A. Yes, sir.

40 Q. What was said in regard to that?

A. Just said they were going to try me as an habitual criminal.

Q. Did you say anything to the Court?

A. I tried to get him to put the trial off and let me get an attorney.

Q. What did the Court say as to that?

A. He said he could not put it off.

Q. Was there anyone there protecting your rights?

Mr. GREENWELL: We object to all of this as incompetent

The COURT: If you proceed like this in every case—well go ahead.

Q. On the morning of the 17th who was with you at the defense table?

A. No one present at the table with me.

The COURT: I will point out to you, Mr. Leming, that this record says "also the defendant in custody, having counsel present"—he says in direct denial of the judgment that he did not have counsel—I am pointing out that there is a conflict in this evidence—proceed.

Q. I will ask you if James Chandler, Rev. James Chandler was present and rendered any advice?

A. He was present.

Q. Did he talk to the Court?

A. He and Judge Bibb talked.

Q. After he and Judge Bibb talked did he advise you?

A. No, sir, he came back over and talked to me.

Mr. GREENWELL: We object.

The COURT: I can't see that has—is Rev. Chandler an attorney?

A. No, sir.

41 Q. Your brother advised you as to the plea to enter?

A. I told him I was guilty of house breaking and larceny.

Q. What plea did you enter?

A. House breaking and larceny.

Q. Did you enter pleas as to being an habitual criminal?

A. I only entered one plea.

Q. Did you have any written notice as to the habitual criminal part?

A. I did not.

Q. How long did this proceeding take?

A. Not over 10 minutes.

Q. Was any evidence read to the Court as to any prior convictions?

A. No.

Q. Did he read any instructions to the jury?

A. He did not.

Q. Were the instructions oral?

A. I don't know what you mean.

Q. Did he talk to them?

A. Only thing they just agreed.

Q. And he sentenced you as a habitual criminal?

A. Yes, sir.

Q. Did the jury ever leave the box?

A. They did not.
Q. They reached the conclusion there?
A. Yes, sir.

Mr. LEMING: I think that is all.

CROSS-EXAMINATION.

By Gen. GREENWELL:

Q. The Court did ask you if you pleaded guilty to the
42 charge of house breaking and larceny and also habitual criminal?
A. House breaking and larceny.
Q. Didn't he tell you you were accused of house breaking and larceny and receiving stolen property and being an habitual criminal?
A. Not until that morning and I told him I wanted time.
Q. That was when the matter first came up—your brother talked to the Attorney General—and you saw the records there on the table in those big red books, and after that you pled guilty.
A. No, sir.
Q. You know Mr. Line, Deputy Court Clerk?
A. I probably know him.
Q. Did you see him in there reading some books to the judge and jury?
A. No, sir.
Q. You saw those records read to the jury?
A. No, sir.
Q. Were you not shown your F B I finger prints by General Clements before they read?
A. They never showed me nothing.
Q. You have been convicted before?

Mr. LEMING: I object to going into previous convictions.
The COURT: He was asked whether anything was read into the record at the trial about former convictions.
Mr. LEMING: Your Honor, the hearing here is to determine whether the habitual criminal charge became void.
The COURT: Let him answer.

43 A. Three times.
Q. You say you have been convicted three times?
A. Yes, sir.

Gen. GREENWALL: That is all.

Rev. JAMES CHANDLER, the next witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. LEMING:

Q. You name is Rev. James Chandler?

A. Yes.

Q. Reverend, on May 17, 1949, were you present at the trial of William Chandler here?

A. I was.

Q. In the Criminal Court?

A. I was.

Q. On the morning of the trial when you went there what did you know he was accused of?

A. House breaking and larceny and receiving stolen property.

Q. When did you first learn that he was also charged as an habitual criminal?

A. Judge Bibb mentioned it to me that morning.

Q. That was your first knowledge of it?

A. Yes, sir.

Q. Did you have any conversation with Judge Bibb?

A. I did.

Gen. GREENWALL: We raise the same objection.

44 THE COURT: Yes, but I am going to let this record be as full as possible.

A. The Judge first asked me a question as to what we were going to do with William and I said that is a $64 question, then the Judge motioned for me to come up and we talked and I mentioned some of the things my mother had said to me. I told him Mother had informed me when he was a small child he was accidentally hit in the head with an ax when we were residing at Concord some 43 years ago.

Q. What did the Judge say regarding the plea?

A. He informed me that there was nothing he could do but plead guilty of housebreaking and larceny.

Q. What did he say about an habitual criminal?

A. He didn't mention it to me at that time.

Q. Did he have you consult with the defendant here?

A. Not at the time.

Q. Did you talk to him?

A. As he didn't have any representative the only thing he could do was to plead guilty.

Q. Was there any double plea as to housebreaking and larceny

and receiving stolen property and also a separate plea as to being an habitual criminal?

A. Not to my knowledge.

Q. How long did this proceeding take from the time it started?

A. I could not be definite, but it seems I was not in the Court Room more than eight or ten minutes.

Q. Was any evidence read to the jury regarding any prior convictions?

A. Not in my presence.

45 Q. You were there?

A. Yes.

Q. Did the Court read a written charge to the jury?

A. Not while I was present.

Q. But you were there?

A. Yes.

Q. Did the jury leave the jury box?

A. Not while I was there.

Q. And you were present?

A. Yes, sir.

Q. And the Court sentenced him as an habitual criminal?

A. Yes.

Q. But you are positive no evidence was read or given to the jury of any former convictions?

A. Not in my presence, no.

Q. But you were there?

A. Yes.

Mr. LEMING: You can ask him.

CROSS-EXAMINATION.

By Gen. GREENWELL:

Q. Reverend, didn't this happen shortly before or when this case was called—you were present there with your brother?

A. This is right.

Q. Other members of your family were there, as I recall?

A. His wife.

Q. You were called first to talk with General Clements?

A. Gen. Clements was not present. I didn't have any conversation except with Judge Bibb.

46 Q. Who told him what he was to be tried on?

A. The Judge told him that morning and he asked for more time.

Q. Well, you knew about it?

A. I didn't until the Judge told me.

Q. But you knew it before it was suggested that he was to plead guilty?

A. The Judge called me to him and he told me in these words, he said "It is my understanding"

Q. And he also told you the record was there showing prior convictions, and you saw the books there on the table?

A. I didn't see any books, he said he understood that the Attorney General was going to try him as an habitual criminal.

Q. That was explained to the jury?

A. Not in my presence.

Q. But you stayed in there?

A. Yes, sir, I was in there.

Q. Didn't you hear him tell the jury that this man was submitting on house breaking and larceny and as an habitual criminal?

A. No, sir.

Q. Where were you?

A. Sitting there at a table.

Q. And you didn't see Mr. Line from the Criminal Court read the record?

A. No, sir, I think there was a lady there.

Q. Did the lady read it?

A. No, sir.

47 Q. How close were you?

A. From the table—The only man I heard was the swearing of witnesses.

Q. Who from the Attorney General's Office was there—I want to test your memory?

A. I don't recall.

Q. Did you see books on the table?

A. There were several tables. I am positive there were not any books there—I was up talking to the Judge.

Q. But you were over at the other table?

A. I don't think I sat down that long, I didn't have time.

Q. You mean you didn't have time before he swore the jury to see the books there on the table?

A. I could not be positive, I wasn't interested in books.

Q. You don't know whether they were read or not?

A. In my presence they were not read.

(Witness excused.)

WILLIE MAE CHANDLER, the next witness, being duly sworn, testified as follows, on

DIRECT EXAMINATION.

By Mr. LEMING:

Q. Your name is Willie Mae Chandler?
A. Yes.
Q. On May 17, 1949, were you present at the time the defendant here was tried for housebreaking and larceny?
A. Yes.
48 Q. What was your understanding he was charged with when you went to court?
A. I know'd what he was charged with, the Judge told him.
Q. Did the Judge tell him he was charged with being an habitual criminal?
A. Yes.
Q. Did he say anything about his being charged with house breaking and larceny?
A. Yes.
Q. When was the first time you knew your husband was charged with being an habitual criminal?
A. The morning of the trial.
Q. Did you talk with the Judge?
A. I did not.
Q. Did you see anyone or know of anyone talking with the Judge regarding William's record?
A. No one but his brother.
Q. When he talked to the Judge, did he come back and talk with William?
A. He just came back, I don't know what he said.
Q. How long did this trial last?
A. About ten minutes.
Q. Was there any evidence read to the jury about his having been convicted on prior occasions?
A. There was not.
Q. Were there any witnesses sworn that testified he had been convicted before?
A. No.
Q. Did the Court read a written charge to the jury, regarding his record?
49 A. Not as I heard.
Q. You were there?
A. Yes, sir.
Q. Did the jury leave the jury box?
A. No.

Q. The Judge just asked them if they agreed with the plea of guilty and they said yes, is that correct?

A. Yes.

Mr. LEMING: I think that is all.

Mr. GREENWELL: I don't care to ask her anything.

Mr. LEMING: I can call Mrs. Ridenour to show there was no charge in the record of an habitual criminal.

The COURT: All right, put her on.

Mr. LEMING: I was going to say that if we could agree on that.

Mr. GREENWELL: All right—

Mr. LEMING: We will stipulate there was no charge to the jury in the court records—no written charge.

Mr. LEMING: I believe that is all of the testimony.

Mr. GREENWELL: Unfortunately Judge Bibb and Mr. Line are both out of town—all I could do is to give my own version.

The COURT: Let's hear it.

General GREENWELL, being duly sworn testified as follows:

William Chandler was indicted by the grand jury on or about March 10, 1949, at that time he was out on bond. The East Tennessee Bonding Company had made bond for $1000.00 on house breaking and larceny. He was duly indicted on March 10th and thereafter the case was set for hearing on May 17, 1949. The case came up on the Docket, as I recall—I am testifying wholly from memory—he said he wanted the case put off as he was advised by the Court that he was being tried as an habitual criminal in addition to house breaking and larceny. He asked that the case be put off so he could get a lawyer and Judge Bibb told him he had had since January up to May to get a lawyer. Judge Bibb has a set rule that he does not appoint counsel for any defendant that is able to make bond. He says that if they are able to hire a bondsman, they are able to get a lawyer, and he does not appoint one.

In this particular case William was advised that he was being tried as an habitual criminal, and he wanted the case put off. Judge Bibb talked to him and his brother and he said "I will plead guilty to those other things" he said he had committed. In preparation of the trial I had the Minute Books brought into the Court Room the records. They went into a hurdle, and he said that he might as well plead guilty in those other cases. Thereupon proof was put on by Mr. Sutton, the prosecutor, and he admitted that he was guilty of going into the Melody Club out on Central and taking cigarettes and that he was guilty of house breaking and larceny. Then after hearing the testimony, Mr. Line read the three former convictions to the jury. The Judge didn't furnish the Jury with a written charge as he does in cases on trial, but he did explain to them the habitual criminal Act and penalty, as well as house breaking and larceny.

and charged them that if, after hearing his plea of guilty to the two charges, if they agreed to that he was to take three years in house breaking and larceny, and if they agreed to hold up their right hands; and if he was guilty as an habitual criminal also
51 to hold up their right hands, and so that was their verdict, he was found guilty of being an habitual criminal and of house breaking and larceny. You want to ask anything, Mr. Leming?

CROSS-EXAMINATION.

By Mr. LEMING:

Q. You admit that he had no attorney?

A. No, sir, I don't believe he had a lawyer.

Q. His brother seemed to be acting as counsel?

A. Yes, he went back and forth a whole lot?

Q. But he had no other counsel?

A. No.

Q. He was only sentenced as an habitual criminal, he was not sentenced on the three charges?

A. I don't believe so.

Q. The jury did sentence him to three years on housebreaking and larceny—that is in the record—and the Judge did sentence him as an habitual criminal "upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an Habitual Criminal, to the State Penitentiary for the remainder of his natural life"—there was no formal written charge as an habitual criminal?

A. No, sir, there was not.

Q. And he was advised for the first time that morning that he was being tried as an habitual criminal?

A. I don't know whether before—probably he wasn't.

Q. He did ask for a continuance so he could get an attorney, when he found he was on trial as an habitual criminal?

52 A. He asked to get the case put off, I don't remember what grounds, probably that.

Q. Do you have a definite, positive and independent recollection of the reading of prior judgments by Mr. Line or any other person—prior judgments of conviction?

A. I am not sure, we had the Minutes in there, it is my impression that Mr. Line read them, or it could be Mr. Cate.

Q. Are you positive those prior judgments were read to the jury?

A. Yes, sir. Yes, sir.

Q. How long did these whole proceedings take?

A. If you count the time the defendant and his brother talked around about it, I would say 20 or 30 minutes—after we got down to business it probably took about 10 minutes.

Q. The jury didn't go out of the box?

A. I don't think they did.

Q. The Court didn't read any written charge?

A. No, sir.

Q. No written charge whatever as to the house breaking and larceny, and the habitual criminal.

A. No, sir, he only told them orally.

Q. Did the Court read the statute, the Habitual Criminal Act.

A. I am not sure he did that.—You might add there is never any written charge where the complainant and defendant come to an agreement.

The Court:

Q. What was that?

A. The Judge never writes a charge where the State and
53 the defendant have agreed, he generally only makes the statement as to what they have agreed on.

Q. General is it not illogical that an accused, who could get no more than life, would plead guilty, when the jury could find him not guilty as an habitual criminal, even though he might be so accused?

A. You are asking whether that would be illogical—I just could not say as to that. I might say that he is not the first that has pleaded guilty as an habitual criminal, others have entered that plea.

Mr. Leming: I think that is all.

Thereupon counsel argued the case.

Thereupon the Court instructed both Mr. Leming and General Greenwell to submit lists of cases substantiating their respective contentions.

The foregoing was all the evidence introduced and proceedings had in the trial of the above styled cause.

54 In the Circuit Court of Knox County, Tennessee

Order Settling Bill of Exceptions—October 6, 1952

This was all of the proceedings and all of the evidence heard upon Petitioner's Habeas Corpus Proceeding.

The Petitioner tenders this his Bill of Exceptions, to the findings, conclusions and Judgment of the Court dismissing his action, which is signed, sealed and ordered to be, and is made a part of the record in the case.

This the 6th day of October, 1952.

(S.) John M. Kelly,
Judge

[File endorsement omitted]

(S.) Carl M. Greenwell,
Ass't Atty. Gen'l.
(S.) Esrl E. Leming,
Atty. for Petitioner.

55 IN THE SUPREME COURT AT KNOXVILLE, TENNESSEE

[File endorsement omitted]

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 5, 1952

I

HISTORY OF THE CASE

Plaintiff in Error, William C. Chandler, hereinafter called Petitioner, filed his petition for Writ of Habeas Corpus on August 12, 1952 before the Honorable John M. Kelly, Judge of the First Circuit Court for Knox County, Tennessee (R. 1,2,3,4,5,6) with certified copies of Indictment and Judgment in Cause No. 7139 out of the Criminal Court of Knox County (Exhibits 1 and 2). The Writ of Habeas Corpus addressed to Warden or Deputy Warden Freytag was issued August 12th, 1952, returnable August 20, 1952 (R. 7).

The cause was heard on August 20, 1952, upon the petition and exhibits 1 and 2 filed with the petition (R. 17) and oral testimony of witnesses (Bill of Ex. 1 to 20), and taken under advisement by the Court which handed down its "Memorandum Opinion" (R. 10, 11,12,13,14,15) on September 4, 1952 (R. 17) upon which Judgment was entered October 2, 1952 nunc pro tunc September 4, 1952 (R. 17, 18) dismissing petitioner's action and remanding him to the custody of the Warden of the State Penitentiary at Petros, Tennessee.

56 On September 29, 1952, Petitioner prayed and was granted an appeal and allowed 30 additional days to file bond and perfect his appeal (R. 19) which appeal bond was duly filed on September 30, 1952 (R. 21). On the 30th day of September, 1952, Petitioner prayed and was granted an additional 30 days within which to file his bill of exceptions (R. 20) and have exhibits 1 and 2 certified to the Supreme Court (R. 20) which exhibits were duly authenticated by the Court on October 4, 1952 (Exhibits 1 and 2). On October 6, 1952, Petitioner filed his bill of exceptions (Bill of Ex.

A-1) and the Record was transmitted and filed in the Supreme Court on October 6, 1952.

II

Statement of the Case

Petitioner, William C. Chandler, filed a petition for Writ of Habeas Corpus (R. 1, 2, 3, 4, 5, 6) on the grounds that his arraignment, trial, conviction and judgment of life imprisonment as an Habitual Criminal by the Criminal Court of Knox County, were had in violation of the "law of the land" and "due process of law" under the Constitution and Statutes of Tennessee, and the 14th Amendment to the Constitution of the United States.

Petitioner, an ignorant colored man, was indicted on March 10, 1949 for a $3.00 Housebreaking and Larceny from a business house (Exhibit 1). He was released on bond pending trial (Bill of Ex. 17, 18) and appeared for trial on May 17, 1949 (Exhibit 2) without an attorney (Bill of Ex. 4, 7, 11, 17, 18) without notice of any Habitual Criminal accusation against him (Bill of Ex. 6, 9, 10, 13, 15, 17, 18) until he appeared for trial, and was orally advised that he would also be tried as an Habitual Criminal and in danger of life imprisonment (R. 2; Bill of Ex. 6, 7, 8, 9, 10, 13, 15, 17, 18) upon which he promptly asked for a continuance to enable him to obtain counsel on the Habitual Criminal accusation, which request was denied by the Court (R. 2; Bill of Ex. 7, 9, 17, 18, 19) after which it appeared to General Greenwell that "His brother seemed to be acting as counsel" (Bill of Ex. 18). Petitioner's brother, Rev. James Chandler, is not an attorney (Bill of Ex. 7) but talked with Judge Bibb, and advised the Judge that Petitioner had been hit in
57 the head with an ax when a child (Bill of Ex. 11), and testified on the Habeas Corpus Hearing "As he" (Petitioner) "didn't have any representative the only thing he could do was to plead guilty" (Bill of Ex. 11). As to his plea, Petitioner says he just pleaded guilty to Housebreaking and Larceny (Bill of Ex. 8, 9) and the testimony of juryman J. L. Clancy (Bill of Ex. 8) and witness James Chandler (Bill of Ex. 11) and witness Attorney General Greenwell (Bill of Ex. 17) casts doubt upon the entry of clearly defined and separate pleas of guilty to Housebreaking and Larceny and being an Habitual Criminal as required by statute.

One witness testified to the Housebreaking and Larceny (Bill of Ex. 17) but Petitioner contends that no judgments of alleged prior convictions or other evidence was introduced to the jury on his alleged plea of guilty as an Habitual Criminal (Bill of Ex. 8, 9) and is supported by the testimony of Juryman J. L. Clancy (Bill of Ex. 5, 6) and testimony of James Chandler (Bill of Ex. 11, 12, 13, 14) and testimony of Willie Mae Chandler (Bill of Ex. 15) that

there were no records of prior convictions read to the jury; although General Greenwell recollected to the contrary (Bill of Ex. 17, 19) and it was his impression that Mr. Line or Mr. Cate read them (Bill of Ex. 19).

All of Petitioner's witnesses testified that the Court did not read a written charge to the jury and the jury did not leave the jury box to consider their verdict (Bill of Ex. 4, 5, 8, 11, 12, 15) fully sustained and admitted by testimony of General Greenwell (Bill of Ex. 17, 19, 20) who also stipulated that no written charge was filed with the court records (Bill of Ex. 16).

Attorney General Greenwell testified as follows:

". . . The Judge didn't furnish the Jury with a written charge as he does in cases on trial, but he did explain to them the habitual criminal Act and penalty, as well as housebreaking and larceny, and charged them that if, after hearing his plea of guilty to the two charges, if they agreed to that he was to take three years in house breaking and larceny, and if they
58 agreed to hold up their right hands and if he was guilty (Bill of Ex. 17) as an habitual criminal also to hold up their right hands, and so that was their verdict, he was found guilty of being an habitual criminal and of house breaking and larceny. (Bill of Ex. 18) and on cross-examination, General Greenwell testified as follows:

Q. The jury didn't go out of the box?

A. "I don't think they did."

Q. The court didn't read any written charge?

A. "No, sir."

Q. No written charge whatever as to the housebreaking and larceny, and the habitual criminal.

A. "No, sir, he only told them orally."

Q. Did the Court read the statute, the Habitual Criminal Act?

A. "I am not sure he did that. You might add there is never any written charge where the complainant and defendant come to an agreement.

The Court:

What was that?

A. "The Judge never writes a charge where the State and the defendant have agreed, he generally only makes the statement as to what they have agreed on." (Bill of Ex. 19, 20).

According to witness, Juryman J. L. Clancy "There wasn't any trial," and the whole trial took "Five Minutes" (Bill of Ex. 2) and "Not over 10 minutes", testimony of James Chandler (Bill of Ex.

11) and "About ten minutes" testimony of Willie Mae Chandler (Bill of Ex. 15) and according to Attorney General Greenwell, "If you count the time defendant and his brother talked around about it, I would say 20 or 30 minutes—after we got down to business it probably took about 10 minutes" (Bill of Ex. 19).

Upon these proceedings the jury found petitioner "guilty of housebreaking and larceny as charged and fixed his punishment at 3 years confinement in the State Penitentiary and also find him guilty of being an habitual criminal" (Exhibit 2) and the Court rendered Judgment sentencing him to life imprisonment (Ex-
30 hibit 2). Petitioner recites that upon the hearing, General Greenwell, counsel and only witness for defendant in error, admitted every substantial fact alleged and proved by petitioner, except whether or not any evidence of alleged prior convictions were read to the jury (Bill of Ex. 16, 17, 18, 19, 20).

General Greenwell, for defendant in error, admitted that Petitioner had no pre-trial notice or warning of the Habitual Criminal accusation against him; that petitioner appeared and was put to trial without an attorney, over his objection; that the court did not give a written charge to the jury as required by statute; that the petitioner was summarily tried on the Habitual criminal accusation; that the trial after they got down to business took about 10 minutes; that the jury did not leave the jury box to deliberate on their verdict; that the court just asked the jury to hold up their hands if they agreed that petitioner "was to take three years in house breaking and larceny" and "if he was guilty as an habitual criminal also to hold up their right hands, and so that was their verdict," (Bill of Ex. 16, 17, 18, 19, 20).

The Circuit Court, upon the Habeas Corpus hearing, as evidenced by its "Memorandum Opinion" (R. 10, 11, 12, 13, 14, 15, 16) and judgment thereon (R. 17) held in substance and effect, as follows:

That upon the Habitual Criminal accusation against him, Petitioner was entitled to no pre-trial notice; that the indictment for Housebreaking and Larceny was sufficient notice; that the oral information of the Attorney General upon his appearance for trial violated none of his rights; that Petitioner waived his right to counsel on the Habitual Criminal accusation; that Petitioner knowingly, competently and intelligently pleaded guilty as an Habitual Criminal and by implication that he was adequately qualified to represent himself without benefit of counsel; that the failure of the trial court to give a written charge to the jury as required by statute was immaterial; that the alleged evidence of prior convictions was sufficient; that the oral submission of the case to the jury and their verdict without deliberation and without leaving the jury box on

...ber of grounds violated to constitutional rights of Petitioner that the judgment of life imprisonment aided by the presumption of regularity was valid despite contradiction, ... and uncertainty in the verdict upon which rendered, the authority by which Petitioner was imprisoned for life ...tly shown in the judgment despite the lack of recitals in ... to show petitioner or a reviewing court the alleged prior ...s, their number, grade or sufficiency to sustain the judg... in effect Petitioner had a fair trial consistent with the ...e land" and "due process"—under the Constitution and ...f Tennessee, and the 14th Amendment to the Constitu... United States.

III

Assignment of Errors

No. 1. The Circuit Court erred in not holding that Petitioner entitled to pre-trial notice or warning of the Habitual ...accusation against him.

No. 2. The Circuit Court erred in holding that the in... for Housebreaking and Larceny was sufficient notice to ... of the Habitual Criminal accusation.

No. 3. The Circuit Court erred in holding that the oral ...n of the Habitual Criminal accusation made by the At... eral for the first time, upon Petitioner's arraignment for ..., was sufficient to comply with "due process."

ERROR No. 4. The Circuit Court erred in holding that ...titioner waived his right to counsel on the Habitual Crimi... accusation against him.

ERROR No. 5. The Circuit Court erred in holding that Peti...er's alleged plea of guilty as an Habitual Criminal was in ...wingly competently and intelligently entered in accord ...rocess of law.

No. 6. The Circuit Court erred in not holding the Trial ...ure to give a written charge to the jury, or file its writ... with the papers in the case, constituted an affirmative and ...tion of the statute and denial of due process of law to ...tioner.

ERROR No. 7. The Circuit Court erred in not finding that ...udgments of prior convictions or other evidence of alleged ...r convictions were read or submitted to the jury.

ERROR No. 8. The Circuit Court erred in finding the Judg... of life imprisonment regular, despite contradiction, ...iguity, and uncertainty in the verdict upon the face of the ...gment.

ERROR No. 9. The Circuit Court erred in sustaining as ...

rendered upon the oral information of the Attorney General and a record entirely silent in recitals of alleged prior convictions, their number, grade or sufficiency to show Petitioner or a reviewing court upon what offenses or by what authority his liberty is taken.

72-88 ERROR No. 10. The Circuit Court erred in holding, in substance and in effect, that Petitioner had a fair trial consisting with "due process of law", in spite of the proceeding by oral information, without pre-trial notice and a denial of counsel on the Habitual Criminal accusation, a summary trial with no written charge to the jury, a summary verdict and judgment upon a record completely silent as to offenses upon which the real accusation and Judgment was based.

89-90 ERROR No. 11. The Circuit Court erred in not holding the Judgment void on its face, for the reason that it recites no Habitual Criminal accusation having been made, and there is nothing in the record to support the Habitual Criminal accusation.

BRIEF and ARGUMENT in support of the Assignment of Errors

(Omitted in printing).

91 — [File endorsement omitted]

In the Supreme Court of Tennessee at Knoxville, September Term, 1952

(Transferred to Nashville)

[Title omitted]

REPLY BRIEF FOR DEFENDANT IN ERROR — Filed December 11, 1952

MAY IT PLEASE THE COURT:

Plaintiff in Error, the Petitioner below, appeals from a judgment dismissing his petition for the writ of habeas corpus.

STATEMENT OF THE CASE

On an indictment charging housebreaking and larceny Petitioner was convicted on May 17, 1949, of the offense charged and of being an habitual criminal. He received a three year sentence on the housebreaking and larceny charge and a life sentence for being an habitual criminal.

In his petition he seeks release from so much of this judgment as imposes a life sentence under the Habitual Criminal Act
92 on the ground that the indictment did not charge him with being an habitual criminal and that he never received any

formal written notice that he was to be tried under the Habitual Criminal Act. He avers in the petition that he was first advised that he would be tried as an habitual criminal on May 17, 1949, when he appeared for trial. The petition goes on to allege that he then requested additional time in order to obtain the services of an Attorney but that the Court disallowed this request. He states that he entered a plea of guilty but that this was not done intelligently and with a full understanding of his rights. It is further alleged that on the trial of the case the State offered no proof of prior offenses to bring him within the Habitual Criminal Act and that the Court did not charge the Jury. It is the theory of the petition that the matters charged constituted a denial of Petitioner's rights under the Federal and State Constitutions.

At the hearing Petitioner testified that he was first advised that he was going to be tried as an habitual criminal on the morning of the trial. He requested a delay in order to get an Attorney but this was refused. Petitioner admitted that he was guilty of the housebreaking and larceny charged in the indictment and that he had no defense whatever to that. It seems that Petitioner's brother, who was a preacher, was present at the time of the trial and that he acted as a sort of liaison man between Petitioner and the trial Judge. Petitioner testified that he entered a plea of guilty only to the charge of housebreaking and larceny. Petitioner, his wife, his brother and one of the Jurors testified that there was no evidence of prior convictions offered and that the trial Judge did not read any written charge to the Jury.

Mr. Greenwell, Assistant District Attorney General, testified in behalf of Defendant. His testimony was substantially the
93-96 same as that of Petitioner and his witnesses except that . . . Greenwell testified that Petitioner pleaded guilty to being an habitual criminal and that evidence of three prior convictions was presented to the Jury.

BRIEF and ARGUMENT in support of Reply Brief for Defendant in Error (Omitted in printing).

96 [File endorsement omitted]

In the Supreme Court of Tennessee, at Knoxville

WILLIAM C. CHANDLER

vs.

WARDEN FRETAG

Knox Law

Habeas Corpus

Affirmed and Remanded

JUDGMENT—Filed February 13, 1953

Came the Plaintiff in error William C. Chandler in proper person and by counsel and also came the Attorney General on behalf of the State, and this cause was heard on the transcript of the record from the Circuit Court of Knox County, upon consideration thereof the Court is of opinion there is no error in the judgment of the Court below.

It is, therefore, ordered, adjudged and decreed that the judgment of the lower court be in all things affirmed, that the Petitioner's action will be dismissed, and he will be remanded to custody of the Warden of the State Penitentiary at Petros where he is now legally restrained of his liberty under a valid sentence of life imprisonment.

Costs of the cause will be paid by Sol Leeds and James Chandler, for which let execution issue.

(Signed) A. B. NEIL
PRIDE TOMLINSON
HAMILTON S. BURNETT

97 In the Supreme Court of Tennessee

[File endorsement omitted]

WILLIAM C. CHANDLER,

VS.

WARDEN FRETAG,

Knox Law
Hon. JOHN M. KELLY,
Judge

For Plaintiff-in-Error:
Earl E. Leming,
Knoxville, Tennessee

For the Defendant-in-Error:
Knox Bigham,
Assistant Attorney General

OPINION—Filed April 25, 1953

The trial judge who heard this habeas corpus proceeding was indeed very careful to investigate and hear the evidence pro and con as to whether or not any of the constitutional rights of the plaintiff in error were violated in the cause in which he was convicted and committed to the State Prison. This hearing by the trial judge was conducted in such a way as to disclose all the facts, overlooking in many instances technicalities, so that the facts might be developed. This hearing was in strict compliance with the case of Johnson vs. Zerbst 304 U. S. 458, 58 Sup. Ct. 1019, 82 L. ed. 1461. After hearing this proof the trial judge wrote a very excellent memorandum setting forth his findings which are amply supported by the record. We adopt this opinion as ours.

98 "This is a proceeding in Habeas Corpus. Petitioner Chandler was indicted in Criminal Court of Knox County at the March, 1949 term on a charge of house-breaking and larceny, but he was not indicted as an habitual criminal even though the house-breaking and larency charge was a fourth felony. He made a $1,000.00 appearance bond.

On May 17, 1949, the trial date, defendant appeared but was not represented by counsel other than his brother, a minister of the Gospel. When asked by Criminal Court Judge Bibb what his plea was, Chandler says he replied that he was guilty of house-breaking and larency for which he stood indicted. It was then for the first time, he says, that he was notified that he was also being tried as an habitual criminal, that information having been imparted to him by the judge. When he learned that he was also to be tried for the latter offense, he asked for but was denied a continuance or delay that would permit him to procure the services of counsel to advise him in respect of pleading to the charge of habitual criminal.

He insists the Court denied him his right to counsel on this occasion.

After he entered his plea of guilty to house-breaking and larceny, and while the matter was being submitted to the jury there were no records of any previous convictions of felonies presented to the jury. Assistant Attorney General Greenwell, representing the State at the trial, testified here that it was his best recollection that either Criminal Court Clerk Cate or Deputy Clerk Line read the relator's felony record into the evidence.

99 It is admitted that Judge Bibb gave no written charge to the Jury in respect to either house-breaking and larceny or habitual criminal. Greenwell testified it was Judge Bibb's practice to give no written charge whenever a defendant had agreed to accept the terms of punishment proposed by the Attorney General and for that reason Judge Bibb's charge was oral and contained only a reading of the Statutes, but no written charge otherwise.

When the matter was presented to them by the trial judge the jury did not leave the jury box. The jurymen approved the three years sentence on the defendant's plea of house-breaking and larceny and at the same time found the defendant guilty of being an habitual criminal. Upon such verdict of the jury the Criminal Judge pronounced this judgment and sentence, reading in part:

> 'Came the Attorney General for the State, also the defendant in custody, having counsel present, and on hearing the indictment read the plea thereto, defendant says *that he is guilty* of house-breaking and larceny and also *that he is guilty* of being an habitual criminal. Thereupon came the following jury, to-wit: .....
> sworn to well and truly ascertain and fix the punishment of the defendant. Having heard the proof in this cause, and charge of the Court upon their oaths the jurors say: They find the defendant guilty of house-breaking and larceny as charged and fix his punishment at 3 years confinement in the penitentiary and also find him guilty of being an habitual criminal. It is therefore the judgment of the court, upon the verdict of the jury, that the defendant for the offense of which he stands convicted, shall be committed as an habitual criminal
> 100 to the State Penitentiary for the remainder of his natural life, as provided in Section 11863.2 of the Code, and shall pay all the costs of this prosecution for which execution may issue. The clerk of this Court will make out and furnish to the Warden of the Penitentiary transcript of the judgment of the Court in this cause at his earliest convenience.

Defendant was taken at once to the State Penitentiary. There was no appeal. Three years have passed since the date of the judg-

ment and the defendant now claims that by serving a sentence of three years for house-breaking and larceny he has served all the sentence he is legally liable for and cannot be imprisoned any longer.

In this proceeding for Habeas Corpus relator claims a denial of due process. The violation of the Constitutional right of which he complains arises out of an alleged invalid and illegal sentence as an habitual criminal. He declares he was never indicted as an habitual criminal; was never notified he was to be tried as such; has had no hearing on that charge; that no evidence of previous felony convictions to sustain such charge ever was presented to the jury which found him guilty of that charge and fixed his punishment at life imprisonment; also that the jury received no written charge of the law from the Court as required by the Statutes of the State; that for such reasons the jury's verdict and the judgment of the Court and the sentence as pronounced by the Court on the verdict was invalid and illegal.

In order for the jury to find that the defendant is an habitual criminal it is not necessary that he be so charged in the indictment, which charges him with a fourth felony. *Brown vs. State, 186 Tenn., 378 (390); McCummings vs. State 175 Tenn. 304.* Section 5 of the Act provides that an indictment may or may
101 not charge a defendant with being an habitual criminal but it is no violation of one's rights if the indictment contains no such notice to the accused. In this case Chandler was not indicted as an habitual criminal and did not have to be and no right of his was violated because he was not indicted.

Where an accused has a record of three previous convictions and is indicted for a felony which, if he should be convicted of it, would constitute a fourth offense and make him liable to be sentenced as an habitual criminal, even then the charge of being an habitual criminal would not be an integral part of the offense for which an accused would be indicted. In this case the charge of being an habitual criminal would not be an integral part of the offense of house-breaking and larceny. Being an habitual criminal is not made an independent offense. Chandler was not entitled to notice in writing of the charge of being an habitual criminal when such is not under the law an independent offense. All the notice Chandler was entitled to receive was the notice by the indictment for house-breaking and larceny.

As to being entitled to have counsel, he would be entitled to have counsel on the charge for which he stood indicted, namely, house-breaking and larceny, but he would not necessarily be entitled to notice that he would be tried on the offense of habitual criminal since the Statute is itself notice to an accused who is being tried for his fourth felony. It appears to the Court in very strong circumstances that Chandler waived his right to counsel. To quote his

own testimony, he said that he had no attorney to defend him on the charge of house-breaking and larceny because, 'knowing that I was guilty and I was going to plead guilty', he considered it useless to employ counsel.

The relator contended that there was no evidence submitted to the jury upon which a conviction could have been sus-
102 tained. There was proof by the Attorney General that some evidence consisting of the testimony of Mr. Sutton, owner of the stolen property and others, was put on so that the jury might have some evidence that Code Section 7174 requires to be heard on a plea of guilt of a felony. Such position was upheld by the State in *Knowles vs. State, 155 Tenn. 181*. Greenwell testified that the relator admitted his previous three convictions on May 17, in the Criminal Court; also, that he was advised by Judge Bibb that he was being tried as an habitual criminal.

The minutes containing the judgment in this case show that Chandler pleaded guilty to house-breaking and larceny. Of that charge he had notice by the indictment. Of that charge he was guilty and readily admitted his guilt. On the habitual criminal part of his case and of his guilt, it was made to appear at the trial to the Judge and to the jury that Chandler had a record of crime (three previous convictions of felony) which brought him within the terms of the habitual criminal act. With the record as it is, it could not have been other and there is the presumption of regularity.

At no place in his petition for Habeas Corpus has defendant Chandler denied the three previous convictions of felonies that made him subject to punishment as an habitual criminal. The record is clear that the evidence of convictions was before the Criminal Judge when he submitted the habitual criminal issue to the jury. Had Chandler not been convicted of felonies on three previous occasions, he should have made such issue in the Criminal Court at the time of his trial for a fourth felony, but he raised no challenge of erroneous identification. He does not deny he is the person alleged to have been previously convicted. Even now, he asks for no oppor-
103 tunity to deny the earlier convictions nor does he contend that those convictions were of a character that would take him out from under the act rather than make him subject to its terms.

In a case very much in fact like the present one, *State ex rel Grandstaff vs. Gore, 182 Tenn. 94*, Justice Chambliss wrote the opinion in that case and had this to say concerning the verdict of a jury finding an accused guilty of house-breaking and larceny:

> 'The judgment below as was shown by the minutes not only properly adjudged him guilty of the offense of house-breaking and larceny, but as required by the terms of the act, fixed his

punishment therefor at life imprisonment. Being an habitual criminal is not made an independent offense. The act provides only that if, upon conviction of a felonious offense, it is made to appear that the accused has a record of crime which brings him within the terms of the act, then his punishment for the offense for which he is then tried shall be life imprisonment.'

The Grandstaff case supra cites with approval two earlier cases, namely, *McCummings vs. State, 175 Tenn. 309; Tipton vs. State, 160 Tenn. 664.*

A person cannot be indicted for being an habitual criminal. There is no such independent offense under the law. If such a charge is contained in an indictment it is mere surplusage. It is not an integral part of a felony. The only notice that one charged with a fourth felony will be held to account as an habitual criminal is the Statute itself. If a defendant facing the possibilty of life imprisonment as a habitual criminal should make an issue of previous convictions, either his own individual connection therewith, or the kind and character of the offense he would be entitled to reasonable opportunity to prepare his defense, but where there is no issue
104 on the previous convictions then he would not be entitled to such opportunity. Judge Chambliss has pointed out in the Grandstaff case that where it is made to appear that one has a record of three previous felony convictions and the accused is found guilty of a fourth felony, then the only thing that can be done is to sentence the guilty fourth offender to life imprisonment. The habitual criminal act is one which imposes greater punishment for those convicted previously of three felonies.

The conclusion of the Court in this case must be that the accused, Chandler, was validly indicted. He was not denied any right to counsel because he had waived the right to counsel under the one thing that he could have been tried for and that was the crime of house-breaking and larceny. He was not entitled to any other notice in this case of a charge of habitual criminal except the Statute itself." Petitioner's action will be dismissed, and he will be remanded to custody of the Warden of the State Penitentiary at Petros where he is now legally restrained of his liberty under a valid sentence of life imprisonment."

It results that the judgment below must be sustained at the cost of the petitioner.

(S.) HAMILTON S. BURNETT.

105 In the Supreme Court at Knoxville, Tennessee

[File endorsement omitted]

[Title omitted]

ORDER EXTENDING TIME FOR FILING PETITION TO REHEAR—Filed Feb. 16, 1953

Upon the timely application of Plaintiff in Error it is ordered that he be allowed and have an additional 20 days within which to prepare and file his Petition for a Rehearing before the Supreme Court in the above styled cause.

This the day of February, 1953.

(S.) HAMILTON S. BURNETT,
Judge

106 In the Supreme Court at Knoxville, Tennessee

[File endorsement omitted]

[Title omitted]

PETITION FOR REHEARING—Filed March 6, 1953

MAY IT PLEASE THE COURT:

Comes the Plaintiff in Error, Habeas Corpus Petitioner, William C. Chandler, hereinafter called Petitioner, in the above styled cause, and says that he is much aggrieved by the opinion of this Honorable Court, handed down on the 6th day of February, 1953, and respectfully prays a rehearing of said cause, for reasons as follow:

1. Petitioner suggests that this Honorable Court overlooked and failed to determine or adjudicate Petitioners constitutional rights under the 14th Amendment to the Constitution of the United States, violations of which he asserted in his petition (R. 4, 5) and relied upon in his appeal.

Petitioner asserts that in addition to State statutory and constitutional grounds, his eleven assignments of error squarely presented federal questions under the "due process of law" clause of the 14th Amendment to the Constitution of the United States.

Assignments of error numbers 1, 2, 3, 4, 5, and 10 are supported by specific brief citations of the 14th Amendment to the Constitution of the United States, and error number 10, supported by appropriate citations, substantially summarized the composite violations asserted in his ten other assignments of error, all of petitioner's

said rights being within the protection of the 14th Amendment under the "due process of law" clause.

107 2. Petitioner further suggests that the Court may have been misled by the erronous assertion on page 2 of the State Attorney General's brief, as follows:

> "The first, second, third, ninth, tenth and eleventh assignments raise the *single* insistence that the judgment of conviction is void because of the failure of the indictment to include the charge that petitioner was an habitual criminal." (Emphasis supplied)

Assignments of error numbers 1, 2 and 3, complain of a denial of pre-trial notice to petitioner of the habitual criminal accusation, and not of failure to include the accusation in the indictment, except upon the grounds that he was entitled to some form of notice in the indictment or otherwise.

Assignment of error No. 9, does not complain of failure of the indictment to charge that petitioner was an habitual criminal, but complains of a judgment upon an oral information, and a record insufficient in recitals to show petitioner or a reviewing court of what prior offenses he was accused, or by what authority he is imprisoned for life. Also, assignments of error 10 and 11 do not contend that failure to indict petitioner as an habitual criminal violated his rights, under decisions of this court, but it is contended he was entitled to pre-trial notice of the accusation, and a clear and unambiguous judgment based on sufficient record recitals to show by what authority he is held.

3. Petitioner suggests that this Honorable Court must have overlooked assigned error no. 4 in holding that petitioner waived his right to counsel on the habitual criminal accusation, in view of Attorney General Greenwell's admission (Bill of Ex. 16, 17, 18, 19) that petitioner asked for counsel or time to get counsel as soon as he was advised that he would be tried as an habitual criminal. How can waiver of his right to counsel be assumed in the face of the uncontroverted evidence that he asked for opportunity to obtain counsel as soon as he was advised of the habitual criminal

108 accusation.

4. Petitioner respectfully shows to this honorable court that the following sentence "Greenwell testified it was Judge Bibb's practice to give no written charge whenever a defendant had agreed to accept the terms of punishment proposed by the Attorney General and for that reason Judge Bibb's charge was oral and *contained only a reading of the statutes*, but no written charge otherwise." (Opinion page 3), is contrary to the evidence in the record in so far as it indicates a reading of the statutes.

The testimony of General Greenwell (Bill of Ex. 19) on this issue is as follows:

"Q. The Court didn't read any written charge?
A. No, sir.
Q. No written charge whatever as to the house breaking and larceny, and the habitual criminal.
A. No, sir, he only told them orally.
Q. Did the Court read the statute, the Habitual Criminal Act?
A. I am not sure he did that.—You might add there is never any written charge where the complainant and defendant come to an agreement."

5. Petitioner complains, respectfully, of the following statement (Opinion, Page 6): "At no place in his petition for Habeas Corpus has defendant Chandler denied the three previous convictions of felonies that made him subject to punishment as an habitual criminal." and (Opinion Page 6, 7) Even now, he asks for no opportunity to deny the earlier convictions nor does he contend that those convictions were of a character that would take him out from under the act rather than make him subject to its terms."

To this Petitioner says that guilt or innocence is not at issue in a Habeas Corpus proceeding, and further that from the record petitioner could not determine the prior offenses of which he was accused. If the State knew in fact what prior offenses were used it had adequate opportunity to present such evidence upon the habeas corpus hearing. Petitioner's petition was drawn on the theory of deprivation of procedural guaranties under due process protected by the 14th Amendment to the Constitution of the U. S.

109 6. Petitioner further respectfully shows to this Honorable Court that the Legislature of Tennessee has shown its disapproval of lack of notice to an accused under the habitual criminal act as disclosed by the 1950 Supplement to the Code of Tennessee, Section 11863.5, as follows:

"11863.5. Indictment to charge habitual criminality.—An indictment or presentment which charges a person, who is an habitual criminal as defined in this chapter, with the commission of any felony specified in sections 10777, 10778, 10788, 10790, 10797, or 11762 of the code, or a crime for which the maximum punishment is death, shall, in order to sustain a conviction of habitual criminality, also charge that he is such habitual criminal. Every person so charged as being an habitual criminal shall be entitled, upon his motion therefor filed in the cause at any time prior to trial, to demand and to have from the state, a written statement of the felonies, prior convictions of which form the basis of the charge of habitual

criminality, setting forth the nature of each such felony and the time and place of each such prior conviction. He shall not, without his consent, be required to go to trial within twenty days from and after the time when such statement was supplied to him or his counsel of record. (1939, Ch. 22, sec. 5, modified.)"

Thus the legislature has published its idea of "due process of law" under the Habitual Criminal Act, after this court sustained convictions under habitual criminal accusations not included in the indictment. Petitioner recognizes that this statute was modified after his conviction, but it still evidences the sacredness of formal pleading and notice to the accused.

Petitioner, therefore, respectfully and earnestly prays that this Honorable Court will grant him a rehearing of this case to the end that the judgment and opinion announced on the 6th day of February, 1953, and petitioner's imprisonment for life under the judgment of 1949 be declared invalid. Further, that this Honorable Court particularly consider and rule upon the Federal Questions raised by petitioner under the 14th Amendment and United States Supreme Court decisions cited in his brief.

(S.) EARL E. LEMING,
Atty. for Petitioner,
508 Empire Bldg.,
Knoxville, Tennessee.

Certificate of Service omitted in printing.

110 In the Supreme Court of Tennessee, at Knoxville

[Title omitted]

REPLY TO PETITION TO REHEAR—March 9, 1953

MAY IT PLEASE THE COURT:

In his petition to rehear Plaintiff in Error urges that this Court overlooked certain questions as to procedural due process under the 14th amendment to the Federal Constitution. It is first insisted that he was denied his constitutional rights because he failed to receive adequate notice that he was to be tried as an habitual criminal. In the memorandum of the trial Court, which was adopted as the opinion of this Court, it was specifically held that he was not entitled to any notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony.

111 It is again insisted that Plaintiff in Error was unlawfully deprived of his right to Counsel. In the Court's opinion it was specifically held that he waived his right to Counsel.

The next complaint is that the criminal Judge's charge to the Jury was oral and not in writing. In its opinion the Court states that it was admitted that Judge Bibb gave no written charge to the Jury. This matter was therefore not overlooked but was fully considered and it was held on the entire record that Plaintiff in Error's conviction was valid. The effect of the Court's opinion is therefore to hold that the failure to give a written charge is not such an error as entitles Plaintiff in Error to relief on the writ of habeas corpus.

We deem it not amiss to quote the following from the case of Railroad v. Fidelity & Guaranty Company, 125 Tenn., 658, at Page 691:

> "A petition for rehearing should never be used merely for the purpose of rearguing the case on points already considered and determined, unless some new and decisive authority has been discovered, which was overlooked by the court. The office of a petition to rehear is to call the attention of the court to matters overlooked, not to those things which the counsel supposes were improperly decided after full consideration."

Respectfully submitted,

(S.) KNOX BIGHAM
Assistant Attorney General.

KB:mws
3-9-53

112 [File endorsement omitted]

In the Supreme Court of the State of Tennessee

WILLIAM C. CHANDLER

vs.

WARDEN FRETAG

Knox Law, Hon. John M. Kelly, Judge.

OPINION ON PETITION TO REHEAR—Filed April 25, 1953

The plaintiff in error through his counsel has filed a courteous, dignified and forceful petition to rehear. It is urged that we overlooked certain questions as to procedural due process under the Fourteenth Amendment to the Federal Constitution. Under this insistence it is said that the plaintiff in error was denied his constitu-

tional rights because he failed to receive adequate notice that he was to be tried as an habitual criminal. We deemed it proper to adopt the memorandum of the trial judge in this case because we felt that this opinion fully covered all questions raised. That opinion specifically held that the plaintiff in error was not entitled to notice that he would be prosecuted as an habitual criminal other than the indictment for housebreaking and larceny, since the statute itself is notice to an accused who is being tried for his fourth felony.

Again the plaintiff in error insists that he was unlawfully
113 deprived of his right to counsel. We fully considered this matter and think that the trial judge's memorandum opinion, which we adopted, fully covers the question wherein it was held that the plaintiff in error had waived his right to counsel.

The next insistence is that the judge trying this habeas corpus petition failed to consider the fact that the criminal judge's charge to the jury was oral and not in writing and therefore this petitioner's rights had been violated. In the opinion of the trial court which we adopted it was admitted that the criminal judge gave no written charge to the jury. We therefore did not overlook this matter but fully considered it and held that under the entire record the plaintiff in error's conviction was valid. The effect of the opinion of course is therefore to hold that the failure to give a written charge is not an error as entitled the plaintiff in error to relief on a writ of habeas corpus. We now specifically so hold.

We have very carefully considered the petition to rehear as we did the matters originally and can find no error therein. For the reasons stated the petition to rehear must be denied.

(Signed) HAMILTON S. BURNETT,
Judge.

114 In the Supreme Court of Tennessee, at Knoxville, September Term, 1952

[Title omitted]

ORDER DENYING PETITION TO REHEAR—April 27, 1953

This cause came on to be further heard on the Petition to Rehear and Reply thereto from a consideration of all of which the Court is of opinion said Petition to Rehear is not well taken and should be denied.

It is therefore ordered and decreed by the Court that the Petition to Rehear is denied.

Costs of petition to rehear will be paid by Sol Leeds and James Chandler, for which let execution issue.

115-116 PRAECIPE (Omitted in Printing)

117 Clerk's Certificate to foregoing transcript omitted in printing.

118-119 Supreme Court of the United States, October Term, 1953

No. —

WILLIAM C. CHANDLER, Petitioner,

vs.

WARDEN FRETAG

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI — July 24, 1953.

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 24, 1953.

TOM C. CLARK,
Associate Justice of the Supreme Court of the United States.

Dated this Twenty-fourth day of July, 1953.

120 In Supreme Court of the United States

[Title omitted]

STIPULATION AS TO THE PRINTING OF THE RECORD — Filed May 28, 1954

Pursuant to the suggestion in your letter of May 10, 1954, we have stipulated with opposing counsel regarding portions of the certified record from the Supreme Court of Tennessee which might be omitted from the printed record in the Supreme Court of the United States, as immaterial to the issues raised. This stipulation is jointly prepared as evidenced by our respective signatures below.

All citations herein are to the left hand lower corner side paging of the Certified Record from the Supreme Court of Tennessee, indicated thusly (R. —).

1. Omit: Letter dated August 12th, 1952 from Rhoten Byington to the Hon. Roy H. Beeler, Attorney General, (R. 9).

2. Omit: Term Caption; Minutes of Circuit Court of Knox County, (R. 10).

3. The "Memorandum Opinion" of the Trial Court, John M. Kelly, Judge (R. 11, 12, 13, 14, 15, 16, 17) may be omitted at the